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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/657,982	09/09/2003	Maurcen S. Wright	0185.03	4320

25712 7590 09/25/2006

USDA-ARS-OFFICE OF TECHNOLOGY TRANSFER  
NATIONAL CTR FOR AGRICULTURAL UTILIZATION RESEARCH  
1815 N. UNIVERSITY STREET  
PEORIA, IL 61604

EXAMINER

LEVY, NEIL S

ART UNIT PAPER NUMBER

1615

DATE MAILED: 09/25/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/657,982

Applicant(s)

WRIGHT ET AL.

Examiner

NEIL LEVY

Art Unit

1615

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 9/9/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 11-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 September 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

Claim 11, 12, 14, 15, 17-21 are rejected under 35 U.S.C. 102(b) as being anticipated by OSBORNE 4942030

*P. fumosoroseus* on suitable carriers or vehicles (column 3, lines 19-54) at a spore concentration effective to kill target insects is disclosed. The composition is shown, no patentable weight given to how it acts, future intended use, or inherent effects-killing termites. Absent any further modification claimed, the blastophores are seen as dessication tolerant. TWEEN wetting agent can be used (column 4, bottom) as spray. Desired particle size-granule, powder, dust-is achieved by grinding (column 5, lines 8-31).

Claim 11, 12, 14, 15, 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by JACKSON 5968808

Here, too are *P. fumosoroseus*, as dessication resistant spores (column 2, summary). Powder and spray formulation are shown at example 5.

Claim 11, 14-17, 21, 22, 25 are rejected under 35 U.S.C. 102(b) as being anticipated by GUNNER et al WO 94/04034

Claim 1 is to recruitment stimuli (page 4) the instant aggregation pheromone, with a fungus (claim 10, *paecilomyces*) to control termites. Carriers are infected termites, dessication thus, resistant spores, (page 10) and include cellulose (column 11) for spores. Page 14 shows hyphae as granules.

Claim 11, 12, 14-25 are rejected under 35 U.S.C. 102(a,e) as being ....anticipated by STAMETS US 2002/0146394

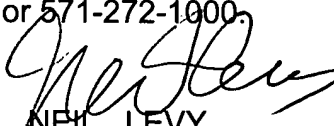
conidia and mycelium of *P. fumosoroseus* [0048, 0066] fungal pathogens with or without attractants and chemical toxicants, as baits are disclosed [0020-0024]. Baits, as granules (pellets) of cellulose [0049] for termites are taught. Added termiticides are at [0056]-pheromones are at [0053]. Other carriers include diatomaceous earth, granules, dusts, emulsifiable concentrates, etc. [0058] with humectants- dessication thus reduced. Termite, rhinotermitidae, are at [0069].

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MICHAEL WOODWARD can be reached on 571-272-8373. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
NEIL LEVY  
Primary Examiner  
Art Unit 1615

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